Lembaga Jurukur Tanah Semenanjung Malaysia v Tuan Hj Maidin bin Hj Manap

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–606 OF 2007

ZALEHA ZAHARI, SULONG MATJERAIE AND T SELVENTHIRANATHAN JJCA

13 JANUARY 2012

Constitutional Law — Legislation — Regulations — Validity — Validity of reg 99(2), (3)(a), (3)(b), (4) and (5) of the Licensed Land Surveyors Regulations 1959 — Whether collection and payment of land surveyors' fees by Land Surveyors Board ultra vires the Licensed Land Surveyors Act 1958 — Whether in the public interest to regulate collection and payment of fees — Regulation valid and of legal effect — Licensed Land Surveyors Act 1958 ss 3 & 21

Professions — Land surveyors — Remuneration — Fees — Whether collection and payment of land surveyors' fees by Land Surveyors Board ultra vires the Licensed Land Surveyors Act 1958 — Whether in the public interest to regulate collection and payment of fees — Regulation valid and of legal effect — Licensed Land Surveyors Act 1958 ss 3 & 21 — Licensed Land Surveyors Regulations 1959 reg 99(2), (3)(a), (3)(b), (4) & (5)

The Land Surveyors Board ('the Board') was established pursuant to s 3 of the Licensed Land Surveyors Act 1958 ('the Act') as the governing body of licensed land surveyors practicing in Malaysia. The respondent applied for declaratory orders, inter alia, that reg 99(2), (3)(a), (3)(b), (4) and (5) of the Licensed Land Surveyors Regulations 1959 ('the Regulations') were ultra vires the powers conferred by s 21 of the Act and accordingly null and void. The respondent also applied for a consequential order for monies deposited with the Board pursuant to reg 99(2) be paid to him. Regulation 99 sets out the fees of a licensed land surveyor and regulates the collection and payment of such fees. The fees payable for services rendered by a licensed land surveyor is that as prescribed in the Thirteenth Schedule (reg 99(1)). A client is required to deposit the prescribed fees with the Board (reg 99(2)). The Board is then entrusted with the duty of disbursing the fees which had been deposited by the client with them to be released to the licensed land surveyor upon completion of specified stages and subject to such drawings being verified to be in compliance with the Department of Survey requirements (reg 99(3)(a) and (3)(b)). Pursuant to reg 99(3)(a) and 99(3)(b) the Board is also conferred with the power to retain one percent of the fees deposited as 'administrative' fees.

The learned High Court judge granted an order-in-terms of the respondent's application. Hence this appeal.

Held, allowing the appeal with costs:

(1) The rationale behind the prescription of fees in reg 99(1) (which was unchallenged) was clearly to ensure that reasonable fees are paid to licensed land surveyors, to promote consistency and prevent undercutting of fees among licensed land surveyors. The intention of reg 99(2), for clients to deposit the same with the Board, was clearly to ensure that licensed surveyors are assured of payment of the prescribed fees upon completion of the tasks they have been appointed to undertake. The subsequent regulation providing for the release of the sums deposited at requisite stages of completion clearly was to ensure that licensed land surveyors carry out their work satisfactorily until the stage acceptable for the issuance of final title. The prescribed procedure relating to the release of the sums was in accord with the Legislature's intention that licensed land surveyors perform their duties professionally, efficiently and within the prescribed time frame (see para 30).

(2) All of the provisions in reg 99 were within the powers conferred upon the Board by s 21 of the Act (see para 31).

(3) The legislative intent in making reg 99 clearly was, for expediency and convenience, it is considered in the public interest to provide that licensed land surveyors would be guaranteed payment of the prescribed fee if they discharged their contractual duties fully with their clients within a prescribed time frame and a client is required to pay the prescribed amount up front by way of deposit with the Board. Clearly payment of the fees from the sums deposited would be contingent upon the licensed land surveyor completing the requisite stage of completion. To monitor this, administrative costs must necessarily be incurred. The words 'other purposes under this Act' in s 21(2)(c) was wide enough to empower the Board to provide for the retention 1% of the fees as 'administrative' fees as provided in reg 99(3)(a) and (3)(b). Such a regulation was valid and of full legal effect (see para 36).

[Bahasa Malaysia summary

Lembaga Juruukur Tanah ('Lembaga') ditubuhkan berikutan s 3 Akta Juruukur Tanah Berlesen 1958 ('Akta') sebagai badan mengawal juruukur tanah berlesen yang beramal di Malaysia. Responden memohon untuk perintah-perintah perisytiharan, antara lain, bahawa peraturan 99(2), (3)(a), (3)(b), (4) dan (5) Peraturan-Peraturan Juruukur Tanah Berlesen 1959 ('Peraturan-Peraturan') adalah ultra vires kuasa-kuasa yang diberikan oleh s 21 Akta dan oleh itu adalah tidak sah dan terbatal. Responden juga memohon untuk perintah berbangkit untuk wang yang didepositkan dengan Lembaga

berikutan peraturan 99(2) dibayar kepadanya. Peraturan 99 menetapkan fi juruukur tanah berlesen dan mengawal selia kutipan dan pembayaran fi sedemikian. Fi yang perlu dibayar untuk perkhidmatan yang diberikan oleh juruukur tanah berlesen adalah seperti yang dinyatakan di dalam Jadual Ketigabelas (peraturan 99(1)). Pelanggan dikehendaki untuk mendepositkan fi yang ditetapkan dengan Lembaga (peraturan 99(2)). Lembaga kemudiannya diamanahkan dengan tugas pembayaran fi yang telah didepositkan oleh pelanggan dengan mereka untuk diserahkan kepada juruukur tanah berlesen selepas siap peringkat-peringkat yang ditetapkan dan tertakluk kepada pengeluaran sedemikian disahkan mematuhi keperluan-keperluan Jabatan Ukur (peraturan 99(3)(a) dan (3)(b)). Berikutan peraturan 99(3)(a) dan 99(3)(b) Lembaga juga diberikan kuasa untuk mengekalkan satu peratus daripada fi yang didepositkan sebagai fi '*administrative*'. Hakim Mahkamah Tinggi yang bijaksana memberikan perintah dalam terma permohonan responden. Maka rayuan ini.

Diputuskan, membenarkan rayuan dengan kos:

(1) Rasional disebalik penetapan fi di dalam peraturan 99(1) (yang tidak dicabar) jelas untuk memastikan bahawa fi munasabah dibayar kepada juruukur tanah berlesen, untuk menggalakkan konsisten dan menghalang fi yang rendah di kalangan juruukur tanah berlesen. Niat peraturan 99(2), untuk pelanggan-pelanggan mendepositkannya dengan Lembaga, jelas untuk memastikan bahawa jurukur berlesen dijaminkan dengan pembayaran terhadap fi yang ditetapkan selepas siap kerja-kerja yang mereka dilantik untuk dijalankan. Peraturan selanjutnya memperuntukkan pembayaran jumlah wang yang dideposit pada peringkat-peringkat yang diperlukan siap jelas adalah untuk memastikan bahawa juruukur tanah berlesen menjalankan tugas mereka dengan memuaskan sehingga peringkat yang boleh diterima bagi pengeluaran hak milik tetap. Prosedur yang dinyatakan berkaitan pembayaran jumlah wang adalah sejajar dengan niat Perundangan bahawa juruukur tanah berlesen menjalankan tugas-tugas mereka secara profesional, cekap dan dalam rangka masa yang ditetapkan (lihat perenggan 30).

(2) Kesemua peruntukan-peruntukan di dalam peraturan 99 adalah dalam kuasa-kuasa yang diberikan kepada Lembaga oleh s 21 Akta (lihat perenggan 31).

(3) Niat perundangan dalam menggubal peraturan 99 jelas adalah untuk kesesuaian dan kemudahan, ia dipertimbangkan untuk kepentingan awam untuk memperuntukkan yang juruukur tanah berlesen akan dijamin pembayaran fi yang ditetapkan jika mereka menjalankan kerja-kerja kontrak mereka sepenuhnya bagi pihak pelanggan-pelanggan mereka dalam rangka masa yang ditetapkan dan pelanggan dikehendaki membayar jumlah yang ditetapkan terlebih dahulu melalui deposit

dengan Lembaga. Jelas pembayaran fi daripada jumlah-jumlah yang didepositkan akan bergantung kepada juruukur tanah berlesen menyiapkan peringkat-peringkat siap yang diperlukan. Untuk memantau ini, kos pentadbiran semestinya akan ditanggung. Perkataan-perkataan 'other purposes under this Act' dalam s 21(2)(c) adalah luas untuk memberikan kuasa kepada Lembaga memperuntukkan pengekalan 1% daripada fi sebagai fi 'administrative' seperti yang diperuntukkan di dalam peraturan 99(3)(a) and (3)(b). Peraturan sedemikian adalah sah dan mempunyai kesan undang-undang yang kukuh (lihat perenggan 36).]

Notes

For a case on remuneration, see 10 *Mallal's Digest* (4th Ed, 2011 Reissue) para 1763.

Cases referred to

Tuan Hj Maidin bin Manap v Lembaga Jurukur Tanah Semenanjung Malaysia [2000] MLJU 530; [2001] 1 AMR 161, HC (distd)

Legislation referred to

Licensed Land Surveyors Act 1958 ss 3, 4, 9, 10, 13, 16, 16(1), (2), (3), (4), 21, 21(1), (1)(c), (2), (2)(c)
Licensed Land Surveyors Regulations 1959 regs 99, 99(1), (2), (3)(a), (3)(b), (4), (5), 100, 101
National Land Code ss 396, 397(1), 398(1), (2), (3), (4), 398A, 409A

Appeal from: Originating Summons No R2–24–35 of 2004 (High Court, Kuala Lumpur).

Abu Bakar Jais (Hisham, Sobri & Kadir) for the appellant.
Zainur Zakaria (Kenneth Gomez with him) (Sabarudin Othman & Ho) for the respondent.

Zaleha Zahari JCA (delivering judgment of the court):

[1] The Land Surveyors Board, (the appellant in this appeal/the respondent in the court below) subsequently referred to as 'the Board', was established pursuant to s 3 of the Licensed Land Surveyors Act 1958 ('the Act'). The Board is the governing body of licensed land surveyors practicing in Malaysia.

[2] Vide originating summons filed on 30 June 2004 the respondent (the applicant in the court below) applied for the following declaratory orders: that reg 99(2), (3)(a), (3)(b), (4) and (5) of the Licensed Land Surveyors Regulations 1959 ('the Regulations') were ultra vires the powers conferred by

s 21 of the Act and accordingly null and void. The respondent also applied for a consequential order for monies deposited with the Board pursuant to reg 99(2) be paid to him.

[3] On 3 July 2007 the learned High Court judge granted an order in terms of the respondent's application. Hence this appeal.

THE LAW

The Licensed Land Surveyors Act 1958

[4] The preamble of the Act states — 'An Act relating to the licensing and control of land surveyors and of matters connected therewith'. The Act came into force on 1 May 1958. The constitution of the Board is set out in s 4 and consists of the Director General of Survey (Chairman), the Deputy Director General of Survey (Deputy Chairman), a Director of Survey appointed by the Minister and three licensed land surveyors registered under s 9 appointed by the Minister.

[5] Sections 9 and 10 of the Act deal with registration and licensing. The powers of a licensed land surveyor are as prescribed in s 13 of the Act. On completion of a title survey the licensed land surveyor is required to lodge the survey plan with the Government Survey Department. The licensed land surveyor who signs the survey plan must deposit such plan together with the relevant field books, calculations sheets and survey data with the Survey Department and all such documents shall, if such plan is approved by the Director General of Survey or such officer appointed by him to approve the same on his behalf, become the property of the government and shall be filed as permanent survey records (s 14).

[6] Section 16(1) of the Act empowers the Director General of Survey or any authorised government surveyor, if he deems fit, to carry out field work and office checks on the title survey work of a licensed land surveyor and, by notice in writing, instruct a licensed land surveyor to correct at his own expense within a time specified in the notice any error made by him (s 16(2)). Such a notice must be sent not more than 12 months after the date on which the relevant survey plan was deposited with the Survey Department in s 14. In the event of the licensed land surveyor refusing or neglecting to correct such errors within the time specified, the Director General is empowered to undertake such correction departmental and to cover the whole costs of such correction from the licensed land surveyor concerned (s 16(3)). If the licensed land surveyor fails to refund the costs of the correction survey within 14 days of receipt of the statement of cost the Director General is authorised by s 16(4) to report such failure to the Board for disciplinary action to be taken against him.

[7] Sections 21(1) and (2) of the Act enable the Board with the approval of the Minister to make regulations. This provision states as follows:

21

(1) Subject to this Act the Board may with the approval of the Minister make regulations to prescribe anything which under this Act is required to be prescribed and generally to carry out the objects and purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing, such regulations may —

(a) prescribe the conditions under which persons desirous of becoming licensed land surveyors under this Act may so qualify;

(b) regulate the practice and conduct of licensed land surveyors;

(c) (c) prescribe fees for registration, annual licenses, examination and other purposes under this Act;

(d) …

(e) …

(f) …

The Licensed Land Surveyors Regulations 1959

[8] In exercise of the powers conferred by s 21 of the Act the Board had, with the concurrence of the Minister, made the Licensed Land Surveyors Regulations 1959.

[9] The reg 99 which is applicable and in issue in this case is that as amended by PU (A) 177/74 and PU (A) 27/80. This regulation sets out the fees of a licensed land surveyor and regulates the collection and payment of such fees. The fees payable for services rendered by a licensed land surveyor is that as prescribed in the Thirteenth Schedule (reg 99(1)). A client is required to deposit the prescribed fees with the Board (reg 99(2)). The Board is then entrusted with the duty of disbursing the fees which had been deposited by the client with them to be released to the licensed land surveyor upon completion of specified stages and subject to such drawings being verified to be in compliance with the Department of Survey requirements (reg 99(3)(a) and (3)(b)). Pursuant to reg 99(3)(a) and 99(3)(b) the Board is also conferred with the power to retain one percent of the fees deposited as 'administrative' fees. Regulation 99 is reproduced below for case of reference:

99

(1) Every licensed land surveyor making a title survey shall charge fees as prescribed in the Thirteenth Schedule hereto.

A (2) The fee shall be deposited with the Board by the client before the title survey is carried out.

(3)

(a) In respect of a title survey of not exceeding ten lots, the Board shall pay to the licensed land surveyor eighty-one percent of the fee, after retaining one percent of the fee for administrative purposes, on completion of the title survey and upon deposit into the Survey Department of the relevant documents and a claim for payment of the fee; and shall pay the balance of eighteen percent of the fee either within a period of three months from the date of such deposit or after the survey plan has been approved by the Surveyor-General or other person authorized by him, whichever is the earlier.

(b) In respect of a title survey of exceeding ten lots, the Board shall, after retaining one percent of the fee for administrative purposes, pay to the licensed land surveyor, in such sums and manner as the Board may determine during the progress of the work and upon a claim for payment, sixty percent of the fee on completion of the field work; and shall pay a further twenty-one percent of the fee upon deposit into the Survey Department of the relevant documents, and a claim for payment of the fee; the balance of eighteen percent of the fee shall be paid either within a period of three months from the date of such deposit or after the survey plan has been approved by the Director-General of Survey or other person authorized by him, whichever is the earlier.

(4) Where a title survey has been commenced by a licensed land surveyor and completed by another licensed land surveyor or surveyors the payment of the prescribed fee due in respect of the title survey shall be calculated on the portion of work completed by each licensed land surveyor accordingly.

(5) In the event of any dispute as regards payment by apportionment, the aggrieved licensed land surveyor shall submit a statement in writing to the Board setting out the grounds upon which his claim is based and if the Board fails to settle the matter by mutual agreement, it shall appoint an arbitrator to arbitrate in accordance with the provisions of the Arbitration Act, 1952.

The National Land Code

[10] The respondent's counsel had in his submissions before us also made reference to the following provisions of the National Land Code ('the Code').

[11] Section 397(1) states as follows:

397

(1) The Director of Survey and Mapping shall exercise general control and supervision over all other Survey Officers.

(2) the Director of Survey and Mapping shall be subject to the general control and supervision of the Director General of Survey and Mapping, who shall act in accordance with such directions as to policy and as to the exercise of his powers as may be given by the Minister.

[12] The powers of the Director of Survey are as provided in s 398(1), (2) and (3) of the Code. Section 398(4) then provides as follows:

398(4) The powers conferred on the Director of Survey and Mapping by subsections (1), (2) and (3) —

(a) may be exercised on behalf of the Director of Survey and Mapping by any Survey Officer or licensed land surveyor; and

(b) …

[13] Reference was also made to two other provisions of the Code which has reference to licensed land surveyors ie ss 398A and 409A of the Code. Section 398A was inserted by National Land Code (Amendment) Act 1992 (Act A 832) and came into force on 1 January 1993. Section 409A was inserted by National Land Code (Amendment) Act 1985 (Act A 615) which came into force on 30 May 1985. This section was subsequently amended by National Land Code (Amendment) Act 1992 (Act A 832) which came into force on 1 January 1993. Both of these provisions are reproduced for ease of reference:

398A

(1) Where any licensed land surveyor carries out a survey of any land for the purposes of this Act, he shall complete the survey within the stipulated time and deposit all the survey plans together with the relevant field books, calculation sheets and other survey data with the Director of Survey and Mapping within such period as may be specified by the Director of Survey and Mapping.

(2) The Director of Survey and Mapping may, by a notice in Form 29D, require any licensed land surveyor who has not completed the survey to produce any document relating to the survey which is in his possession or control.

(3) Where any licensed land surveyor fails to complete any survey, without any reasonable cause, the Director of Survey and Mapping shall complete or cause to be completed the survey and recover the costs of the completion of the survey from such surveyor.

409A Where under this Act, any survey fees are chargeable, such survey fees shall not be chargeable where the land is to be surveyed by a licensed land surveyor and a certificate from the Land Surveyors Board certifying that the survey of the land will be carried out, is furnished.

THE RESPONDENT'S APPLICATION

[14] The respondent in his affidavit filed in support of the application averred that he has been registered with a license to practice as a land surveyor under s 9 of the Act since 1960.

[15] No challenge was made as to the validity of reg 99(1), only reg 99(2), (3), (4) and (5). In so doing it is to be inferred that the respondent accepts that the Board is empowered to set out the fees of a licensed land surveyor as set out in reg 99(1).

[16] The respondent's complaint is targeted against the procedure set out in the subsequent regulations requiring the prescribed fees to be deposited by a client with the Board, and its release to a licensed land surveyor upon specified stages of completion, and the regulation enabling the Board to retain 1% of the fees 'for administrative purposes'.

[17] Paragraphs 5, 6 and 7 of the respondent's affidavit filed in support of the application states as follows:

> 5. Dalam haluan profesion saya, saya telah membuat pelbagai kerja tinjauan dan kerja-kerja yang masih belum di selesaikan di mana wang telah di simpan dengan Lembaga tersebut yang telah dihuraikan dan dijadualkan dan jadual tersebut dilampirkan di sini dan ditandakan sebagai ekshibit 'HM-2'. Oleh yang demikian saya menyatakan bahawa RM815,567.74 di mana keseluruhannya adalah yuran di simpan dengan pihak Defendan, semasa memfailkan Saman Pemula ini.
>
> 6. Saya telah menyimpan yuran saya yang telah dibayar oleh klien-klien individu saya berkaitan dengan kerja-kerja tinjauan tersebut dengan pihak Defendan menurut Peraturan 99 (c) Peraturan-Peraturan tersebut.
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> 7. Defendan sekarang menyimpan 1% daripada yuran tersebut sebagai caj pentadbiran bagi tujuan pentadbiran dan baki tersebut dibayar kepada saya secara progresif bergantung kepada tujuan kerja-kerja tinjauan yang telah diselesaikan dan menurut Peraturan-peraturan 99 (3a), 99(3b), 4 dan 5.

[18] Paragraphs 12 and 13 of the respondent's affidavit then states as follows:

> 12. Saya menyatakan bahawa keperluan dalam Akta tersebut adalah hanya s.14 menyatakan bahawa saya perlu menyimpan geran tinjauan yang lengkap dengan Jabatan Tinjauan (Survey Department) serta semua kertas kiraan buku-buku lapangan dan data tinjauan yang relevan bagi kelulusan Director General of Survey dan bukan Defendan.

13. Selanjutnya tidak terdapat peruntukan dalam Akta tersebut yang menyatakan bahawa seorang Jurukur Tanah perlu menunjukkan kepada Defendan buku-buku lapangan yang relevan dan kerja yang telah diselesaikan selepas penyelesaian 60% daripada kerja tinjauan tersebut.

[19] The issues raised in this appeal will now be dealt with in turn.

First issue: Whether reg 99(2), (3), (4) and (5) of the Regulations valid?

[20] The learned High Court judge read both the Act and the Regulations restrictively. According to her the Board's powers were limited to the prescription of fees for registration and license and the conduct and discipline of land surveyors. The learned judge was not persuaded with the argument that the words in the preamble, nor that as provided in s 21(1) of the Act, being wide enough enabling the Board to require the prescribed fees to be deposited with the Board. Her reasoning in arriving at such an interpretation was because s 21(2) did not expressly provide for the same but only provided for the collection of fees relating to the registration, annual license and examinations. The learned judge was of the view the regulation requiring clients to deposit the prescribed fees and disbursement thereof upon completion of requisite stages of licensed land surveyors did not fall within the ambit of the phrase 'to regulate the practice and conduct of licensed land surveyors' in the preamble nor within the phrase 'and other purposes under this Act'.

[21] The appellant counsel submission on this issue was this. The Act is a specific law regulating the practice of the licensed land surveyors. Effect must be given to the word 'control' in the preamble to mean 'authority to direct, restrict or regulate'. The words 'and of matters connected therewith' must be construed to mean that it is not to be confined to matters which had been expressly specified.

[22] The enabling regulation making power of the Board under s 21(1) must of course necessarily relate to the objects and purposes specified in the preamble. The appellant's counsel submitted that reg 99 read as a whole was in accord with the purposes of the Act. Regulation 99 did not in any way add to or depart from that which the Legislature had intended in passing the Act. The Board's power to make regulations relating to 'fees', according to the appellant's counsel, is not to be construed to be limited for the purpose of registration, annual license and examination. He urged the court to note that s 21(1)(c) did not end with the word 'examination' but included the phrase 'and other purposes under this Act'. He was of the view that effect must be given to the inclusion of this phrase, 'and other purposes under this Act'. The inclusion of this phrase

must be construed to mean that the Board had the power to make regulations in respect of matters ancillary and incidental to the specific provisions. The regulation providing for clients to deposit the prescribed fees with the Board in the first instance, and its release progressively upon the contracted work being performed by the licensed land surveyor, was clearly to ensure that licensed land surveyors perform their contractual duties such that the good name of the profession is assured. Such a regulation was, according to the appellant's counsel, within the ambit of the general words in the preamble to 'control of land surveyors and of matters connected therewith'.

[23] The respondent's counsel took issue. The respondent's counsel advanced two reasons in the court below and on appeal before us, as why reg 99 should be declared invalid. The duty of a licensed surveyor to complete a survey has been extensively prescribed in the Code and in the Act. According to the respondent's counsel the power to ensure the duty to complete a survey has been conferred on the Director of Survey pursuant to s 398A read together with ss 396 and 409A of the Code and ss 14, 15 and 16 of the Act. He submitted that it could not have been the intention of the Legislature to also confer such a power on the Board. The respondent's counsel was of the view that reg 99 usurps the power of the Director of Survey under s 398A of the Code.

[24] The scope of the powers of the Board to make regulations under s 21 according to the respondent counsel must be confined to matters of professional conduct and practice such that as provided in reg 101 — Code of Professional Conduct — Part V1. Reference was then made to the High Court decision of *Tuan Hj Maidin bin Manap v Lembaga Jurukur Tanah Semenanjung Malaysia* [2000] MLJU 530; [2001] 1 AMR 161 where the disciplinary action taken against the licensed land surveyor concerned had been successfully challenged.

Decision

[25] Our duty in a case such as this is to examine the mischief which the statute was intended to remedy, then to examine, not only the enacting provisions, but its preamble and other statutes in pari materia.

[26] The intention of the Legislature in passing the Act was clearly in recognition that survey in connection with land transactions should be at the expense of parties and not at government's expense and to license suitably qualified persons to undertake survey for title. The preamble to an Act explains the reason or motive for and the object sought to be

accomplished by the enactment of the statute. We are mindful that a preamble cannot either enlarge or abridge the scope and purpose of an Act.

[27] Our reading of the case *Tuan Hj Maidin bin Manap v Lembaga Jurukur Tanah Semenanjung Malaysia* [2000] MLJU 530; [2001] 1 AMR 161 referred to by the respondent's counsel is that it can be distinguished on facts. The appellant in that case (we understand that he is also the respondent in this case) was subjected to disciplinary action by the Board for failure to complete survey work in time on the ground that reg 100 of the Regulations had been infringed. We note that the validity of reg 99 was not challenged and accordingly was not an issue in that earlier case. In that earlier case the respondent had successfully challenged the disciplinary action taken against him on the ground that it was premature. We are of the view that the decision in that earlier case is of no assistance to us in making a considered decision in this case as the issue raised here was a completely different one.

[28] From our reading of the Act and the provisions of the Code referred to us, it is clear that there is a nexus between the individual licensed land surveyor, the Survey Department and the Board. In our considered opinion the provisions of the Code referred to by the respondent's counsel (ie ss 398A, 396 and 409A) in relation to licensed land surveyors, is that they are consistent, harmonious and compatible with the provisions of the Act. Giving the provisions of the Code referred to by the respondent's counsel and the Act a harmonious construction we are not in agreement with the respondent's counsel's submission that there was a usurpation of the Director of Survey's powers under the Code. We take the view that the newly inserted provisions referred to by the respondent's counsel were supplemental to the provisions of the Act which had long been in force. Giving the provisions referred to their ordinary and plain meaning we are of the view that the proper construction to be them is that the Board is the link between the work of the individual licensed land surveyor and the Department of Survey and Mapping for the stated purposes for which the Act had been passed and the Regulations made.

[29] The commonly used technique had clearly been adopted in this case, ie to confer a general power and then, without prejudice to the generality of this power, to confer the power to make regulations for certain specific heads. Regulations may be considered to be valid if it is justified under the general power even if it does not fall within the scope of any specific head. In adopting such a formula the purpose of specific

heads is only illustrative, and the range and scope of the general power to make regulations is not thereby restricted.

[30] To 'regulate practice' must be construed to mean to set the standard of which all licensed land surveyors should attain. The rationale behind the prescription of fees in reg 99(1) (which was unchallenged) was clearly to ensure that reasonable fees are paid to licensed land surveyors, to promote consistency and prevent undercutting of fees among licensed land surveyors. The intention of reg 99(2), for clients to deposit the same with the Board, was clearly to ensure that licensed surveyors are assured of payment of the prescribed fees upon completion of the tasks they have been appointed to undertake. The subsequent regulation providing for the release of the sums deposited at requisite stages of completion clearly was to ensure that licensed land surveyors carry out their work satisfactorily until the stage acceptable for the issuance of final title. In other words the prescribed procedure relating to the release of the sums was in accord with the Legislature's intention that licensed land surveyors perform their duties professionally, efficiently and within the prescribed time frame.

[31] Our conclusion on the first issue is that all of the provisions in reg 99 were within the powers conferred upon the Board by s 21 of the Act.

Second issue: Whether the Regulation enabling the Board to retain 1% of a licensed land surveyor fees as administrative fees valid?

[32] The High Court ruled that the retention of 1% of the fees of a licensed surveyor was a 'levy' and ultra vires the power conferred by s 21(1) of the Act and accordingly null and void. Consequentially, the learned judge then directed the sums deposited with the Board pursuant to reg 99(2) be paid to the respondent.

[33] The rival arguments presented before us on this issue are as follows. The appellant's counsel stressed the fact that licensed land surveyors were required to perform the duties they have contracted with their clients in accordance with the provisions of the Act before the fees which had been deposited with the Board is paid to them. It cannot be denied that administrative charges must necessarily be incurred. The appellant's counsel submitted the words 'other purposes under this Act' in s 21(2)(c) of the Act was wide enough to empower the Board to provide for the retention of one percent of the fees as administrative fee as provided in reg 99(3)(a) and (3)(b). Such a regulation was accordingly

valid and of full legal effect. He submitted the judge therefore erred in directing the sum deposited with the Board pursuant to reg 99(2) be paid to the respondent.

[34] The respondent counsel in reply submitted that the imposition of an administrative fee of 1% does not fall within the ambit of the words 'to regulate the practice and conduct of the Licensed Land Surveyors'. According to him, being fiscal in nature, there must be an express provision in the Act enabling the Board to do so. As there is no such express provision in s 21, it must be construed that the Board is not empowered to do so. The High Court judge was therefore right in declaring such a levy to be invalid.

Decision

[35] Our earlier decision on the first issue, that there is a co-relationship between the fees deposited by a client, the duty of a licensed land surveyor to complete a survey, and the Board's duty to overseer due compliance, must of course be taken into consideration in determining the second issue.

[36] The legislative intent in making reg 99 clearly was, for expediency and convenience, it is considered in the public interest to provide that licensed land surveyors would be guaranteed payment of the prescribed fee if they discharged their contractual duties fully with their clients within a prescribed time frame and a client is required to pay the prescribed amount up front by way of deposit with the Board. Clearly payment of the fees from the sums deposited would be contingent upon the licensed land surveyor completing the requisite stage of completion. It cannot be denied that to monitor this, administrative costs must necessarily be incurred. In our considered opinion the words 'other purposes under this Act' in s 21(2)(c) was wide enough to empower the Board to provide for the retention 1% of the fees as 'administrative' fees as provided in reg 99(3)(a) and (3)(b). Such a regulation in our view were valid and of full legal effect.

CONCLUSION

[37] To sum up, we hold that not only was reg 99(1) (as conceded by the respondent) to be valid, but also reg 99(2), (3)(a), (3)(b), (4) and (5) to be also valid and of full legal effect. The learned High Court judge had accordingly erred in making the declaratory orders which she did, and then as matter of course, in directing the sums deposited with the Board under reg 99(2) of the Regulations to be paid to the respondent. Such a

determination of the respondent's entitlement of the sums deposited clearly was not solely one of law but also one of facts.

[38] For the above reasons the appeal was allowed with costs. We awarded costs here and below in the sum of RM15,000 to the appellant. The deposit to appellant.

Appeal allowed with costs.

Reported by Kanesh Sundrum